

Article 8

Critical Area Regulations

§8.1 Critical Area Program Purpose and Goals

§8.1.1 The Chesapeake City Critical Area Program

The Chesapeake City Critical Area Program consists of the Chesapeake City Comprehensive Development Ordinance including the Official Critical Area Map.

§8.1.2 Goals and Implementation

- A. The goals of the Chesapeake City Critical Area Program are to accomplish the following:
 - 1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
 - 2. Conserve fish, wildlife, and plant habitat; and
 - 3. Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.
- B. The Town of Chesapeake City Critical Area Program consists of this Ordinance and the Official Critical Area map(s).

§8.1.3 Regulated activities and applicability

Any applicant for a permit or license to pursue activities within the Critical Area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Town after review to determine compliance with the Chesapeake City Zoning Article.

§8.1.4 Critical Area Overlay District Map

- A. The Official Critical Area Overlay District Map is maintained in force as part of the Official Zoning Map for Chesapeake City. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
 - 1. All waters of and lands under the Chesapeake Bay and its tributaries to the head

of tide as indicated on the State wetland maps, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland, and

2. All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- B. Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:
1. Intensely Developed Area (IDA).
 2. Limited Development Area (LDA).
 3. Resource Conservation Area (RCA).
- C. The Critical Area Overlay District Map may be amended by the Mayor and Council in compliance with amendment provisions in this Article, the Maryland Critical Area Law, the Critical Area Criteria and Critical Area Regulations.

§8.1.5 General Requirements

- A. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this Article.
- B. Reasonable accommodations for the needs of disabled citizens.
1. An applicant seeking relief from the Critical Area standards contained in this Article in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating by a preponderance of evidence the following:
 - a. The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
 - b. Literal enforcement of the provisions of this Article would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
 - c. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Article or restore the disabled resident's or user's reasonable use or enjoyment of the property;
 - d. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Article as applied to the property; and

- e. The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.
- 2. The Board of Appeals shall determine the nature and scope of any accommodation under this Article and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Article. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
 - 3. The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this Article. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.

§8.2 Districts

§8.2.1 Intensely Developed Areas

A. Development Standards

For all development activities in the Intensely Developed Areas, the applicant shall identify any environmental or natural feature described below and meet all of the following standards:

- 1. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation;
- 2. All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction, and maintenance shall:
 - a. Provide maximum erosion protection;
 - b. Minimize negative impact on wildlife, aquatic life, and their habitats; and
 - c. Maintain hydrologic process and water quality.
- 1. All development activities that must cross or affect streams shall be designed to:

- 1.Reduce increases in flood frequency and severity that are attributable to development;
 - 2.Retain tree canopy so as to maintain stream water temperature within normal variation;
 - 3.Provide a natural substrate for stream beds; and
 - 4.Minimize adverse water quality and quantity impacts of stormwater.
2. All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.

§8.2.2 Limited Development Areas

A. Development Standards

For all development activities in the Limited Development Areas, the applicant shall identify any environmental or natural feature described below, and shall meet all of the following standards:

1. Development and redevelopment shall be subject to the water-dependent facilities requirements of this Article;
2. Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
 - a. Provide maximum erosion protection;
 - b. Minimize negative impacts on wildlife, aquatic life and their habitats; and
 - c. Maintain hydrologic processes and water quality.

B. All development activities that must cross or affect streams shall be designed to:

1. Reduce increases in flood frequency and severity that are attributable to development;
2. Retain tree canopy so as to maintain stream water temperature within normal variation;

3. Provide a natural substrate for stream beds; and
4. Minimize adverse water quality and quantity impacts of stormwater.
 - C. If there is a wildlife corridor system identified by the Wildlife Heritage Service on or near the site which can be enhanced by additional plantings, the applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Article. Chesapeake City shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.
 - D. Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
 - E. Except as otherwise provided in this subsection, lot coverage as defined in §8.9 Critical Area Definitions is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated LDA.
 - (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
 - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
 - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
 - (d) Lot coverage limits provided in (a) and (b) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
 - (a) The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements.
 - (b) Lot coverage associated with new development activities on the property have been minimized;
 - (c) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in §(a) by more than twenty-five percent (25%) or five hundred square feet

(500 square feet), whichever is greater;

- (d) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
- (e) The following summarizes the limits set forth in (i) through (iii) above:

Lot/Parcel Size (Square Feet)	Lot Coverage Limit
0 – 8,000	25% of parcel + 500 SF
8,001 – 21, 780	31.25% of parcel
21,780 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

- (e) If the Planning Commission or its designee makes the findings set forth in (d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:

- a. Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of Best Management Practices to improve water quality; and
- b. Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
- c. If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to Chesapeake City in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.50 per square foot of the required mitigation.

- F. The alteration of forest and developed woodlands shall be restricted and shall be mitigated as follows:

- (1) The total acreage in forest and developed woodlands within the Critical Area shall be maintained or preferably increased;
- (2) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
3. If an applicant is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared.

4. An applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of 3 times the areal extent of the forest or developed woodlands cleared.
 - a. If an applicant is authorized to clear any percentage of forest or developed woodland the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town.
- G. The following are required for forest or developed woodland clearing as required in (7) above:
1. The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by Chesapeake City shall be posted to assure satisfactory replacement as required in (7) above and plant survival;
 2. No clearing is allowed until the Town has issued a permit. Forests and developed woodlands which have been cleared before obtaining a Town permit is a violation and shall be replanted at three times the areal extent of the cleared forest
 3. Clearing of forest or developed woodlands that exceed the maximum area allowed in (7) above or prior to the issuance of a permit shall be replanted at three times the areal extent of the cleared forest; and
 4. If the areal extent of the site limits the application of the reforestation standards in this section the applicant may be allowed to plant offsite or pay a fee in lieu of planting.
- H. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent.
1. The applicant shall designate, subject to Town approval, a new forest area on a part of the site not forested; and
 2. The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town.

§8.2.3 Resource Conservation Areas

A. Development Standards

For all development activities and resource utilization in the Resource Conservation Areas, the applicant shall meet all of the following standards:

1. Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area provisions of this Article.

2. Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres.
3. Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in this Article.
4. Nothing in this section shall limit the ability of a land owner to participate in any agricultural easement program or to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one dwelling unit per 20 acres.

§8.3 Land Use and Density

§8.3.1 Permitted Uses

- A. Permitted uses in the Critical Area shall limited to those uses allowed by the underlying zoning districts as modified by both Table 5 and the supplemental use standards in provided in §8.3.2 provided such uses meet all standards established for the Critical Area Overlay District.

TABLE 5: PERMITTED USES IN THE CRITICAL AREA

Item	Use Description	Land Use Management Designation		
		IDA	LDA	RCA
1.00	RESIDENTIAL			
1.10	Accessory Dwelling Unit	P	P	PC
2.00	INSTITUTIONAL			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC
2.50	Day Care	P	P	PC
3.00	COMMERCIAL			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP
3.30	Home occupation	P	P	PC

	LEGEND: P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted	Land Use Management Designation		
Item	Use Description	IDA	LDA	RCA
3.40	Bed and breakfast facility	P	P	PC
4.00	MARITIME/WATER DEPENDENT			
4.10	Expansion of existing commercial marinas	P	P	PC
4.20	New marina, commercial	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas	P	P	PC
4.50	Research Areas	P	P	PC
4.60	Fisheries activities	P	P	P
4.70	Structures on Piers	PC	PC	PC
4.80	Private pier	P	P	P
5.00	RECREATION			
5.10	Golf course	P	P	PC
6.00	INDUSTRIAL			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	P	PC	NP
6.30	Non-maritime heavy industry	P	NP	NP
7.00	TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES			
7.10	Utility transmission facilities	PC	PC	PC
8.00	PUBLIC/QUASI-PUBLIC			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC

B. Maximum Permitted Density

1. The maximum permitted density for properties located in the Chesapeake City Critical Area shall be as follows:
 - a. In the Intensely Developed Area, maximum density shall be as permitted by the underlying zoning.
 - b. In the Limited Development Area, maximum density shall be as permitted by the underlying zoning.
 - c. In the Resource Conservation Area, maximum density shall be one dwelling unit per 20 acres.
2. Calculation of 1-in-20 acre density of development.

In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Town:

- a. Shall count each dwelling unit;
- b. May permit the area of any private wetlands located on the property to be included under the following conditions:
 1. The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight (8) acres; and
 2. The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Town, the Commission, and the State Department of the Environment.

§8.3.2 Supplemental Use Standards

The following supplemental use standards apply to the permitted uses listed in Table A(1)(a) above and shall apply when the permitted use is allowed in the underlying zoning district.

A. Accessory Dwelling Unit (1.10)

1. If a permitted use in the underlying zoning district, one additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the Resource Conservation Area (RCA) provided that it meets the requirements found in COMAR §8-1808.1(e).

B. Existing Institutional Uses (2.10)

- (1) Existing institutional facilities shall be allowed in Resource Conservation Areas.
- (2) Expansion of existing institutional facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Article and the Grandfathering provisions in §8 and may require growth allocation.

C. New Institutional Uses (2.20)

1. New institutional facilities and uses, except those specifically listed below shall not be permitted in Resource Conservation Areas (RCAs).
2. Certain institutional uses may be permitted in Resource Conservation Areas (RCAs) if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Article. These institutional uses are limited to:
 - a. A cemetery that is an accessory use to an existing use; provided manmade lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;

- b. A home day care facility as defined in this Ordinance;
- c. A group home, halfway house, or intermediate care institution as defined in this Ordinance;
- d. Churches and other buildings for religious assembly;
- e. Nursing Care Institutions, Child Care Institutions
- f. Other similar uses determined by the Town and approved by the Critical Area Commission to be similar to those listed above.

D. Existing Commercial Uses (3.10)

- 1. Existing commercial facilities and uses, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.
- 2. Expansion of existing commercial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Article and the Grandfathering provisions in §8 and may require growth allocation.

E. New Commercial Uses (3.20)

- 1. New commercial uses, except those specifically listed, shall not be permitted in Resource Conservation Areas (RCAs).
- 2. Certain commercial uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Article. These commercial uses are limited to:
 - a. A home occupation as an accessory use on a residential property and as provided for in this Article;
 - b. A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; and
 - c. Other uses determined by the Chesapeake City and approved by the Critical Area Commission to be similar to those listed above.

F. Expansion of Existing Commercial Marinas (4.10)

- 1. Expansion of existing commercial marinas may be permitted within Resource Conservation Areas provided:
 - a. Water quality impacts are quantified and appropriate Best Management Practices that address impacts are provided;

- b. That it will result in an overall net improvement in water quality at or leaving the site of the marina;
 - c. The marina meets the sanitary requirements of the Department of the Environment; and
 - d. Expansion is permitted under the nonconforming use provisions of this Article.
2. Expansion of existing commercial marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that the applicant demonstrates:
- a. The project meets a recognized private right or public need;
 - b. Adverse effects on water quality, fish, plant and wildlife habitat are minimized and Best Management Practices are applied to address impacts;
 - c. Insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and
 - d. Expansion is permitted under the nonconforming use provisions of this Article.

G. New Marina, Commercial (4.20)

- 1. New commercial marinas shall not be permitted in Resource Conservation Areas (RCAs).
- 2. New commercial marinas may be permitted in Limited Development Areas (LDAs) and Intensely Developed Areas (IDAs) if allowed in the underlying zoning, provided:
 - a. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
 - b. New marinas meet the sanitary requirements of the Department of the Environment.
 - c. New marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
 - i. The project meets a recognized private right or public need;
 - ii. Adverse effects on water quality, fish, plant and wildlife habitat are minimized and Best Management Practices are applied to address impacts; and
 - iii. Insofar as possible, non-water-dependent structures or operations

associated with water-dependent projects or activities are located outside the Buffer.

H. Community Piers and Non-commercial Boat Docking and Storage (4.30)

1. New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the Buffer subject to the requirements in this Article provided that:
 - a. These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
 - b. The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
 - c. The facilities are associated with a residential development approved by the Town for the Critical Area and consistent with all State requirements and the requirements of this Article applicable to the Critical Area;
 - d. Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities and Best Management Practices are applied to address impacts; and
 - e. If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.
2. Number of slips or piers permitted.

The number of slips or piers permitted at the facility shall be the lesser of §a or §b below:

- a. One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in the subdivision in the Resource Conservation Area; or

- b. A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

TABLE 6 NUMBER OF SLIPS PERMITTED

Platted Lots or Dwellings in the Critical Area	Slips
up to 15	1 for each lot
16 – 40	15 or 75% whichever is greater
41 – 100	30 or 50% whichever is greater
101 – 300	50 or 25% whichever is greater
over 300	75 or 15% whichever is greater

I. Public beaches and Public Water-Oriented Recreational and Educational areas (4.40)

1. Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas.
2. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:
 - i. Adequate sanitary facilities exist;
 - ii. Service facilities are, to the extent possible, located outside the Buffer;
 - iii. Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
 - iv. Disturbance to natural vegetation is minimized and Best Management Practices are applied to address impacts and Best Management Practices are applied to address impacts; and
 - v. Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas if service facilities for these uses are located outside of the Buffer.

J. Research Areas (4.50)

1. Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Buffer.

K. Fisheries Activities (4.60)

1. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the Buffer in Intensely Developed Areas, Limited Development Areas and Resource Conservation Areas.

L. Structures on Piers (4.70)

1. Except as provided in 1, 2, and 3 below, construction of dwelling unit or other non-water-dependent structure on a pier located on State or private tidal wetlands is prohibited.
 - a. A building permit for a project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved provided a permit was issued by the Department of Natural Resources on or before January 1, 1989.
 - b. A building permit for a project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved if the following conditions exist:
 - a. The project is located in an Intensely Developed Area (IDA);
 - b. The project is constructed on a pier that existed as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area; and
 - c. The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface of a pier to be removed is not intact, but pilings identify its previous size, then that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed.
 - c. A building permit for the repair of an existing dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved.

- d. If a structure that is not water-dependent is permitted under the exceptions included in this section, an applicant is required to demonstrate that the project will meet the following environmental objectives using the standards established herein:
 - i. The construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water;
 - ii. The quality of stormwater runoff from the project will be improved; and
 - iii. Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.

M. Golf Course (5.10)

- 1. A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc., may be permitted in Resource Conservation Areas (RCAs) provided:
 - a. Such use is a permitted use allowed in the underlying zoning district; and
 - b. Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

N. Existing Industrial Uses (6.10)

- 1. Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas.
- 2. Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Article and the Grandfathering provisions in §8 and may require growth allocation.

O. New Industrial Uses (6.20)

- 1. New industrial uses shall not be permitted in Resource Conservation Areas
- 2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas if permitted uses in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.
- 3. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Buffer Management Areas.

P. Non-Maritime Heavy Industry (6.3)

1. Non-maritime heavy industry may be permitted if:
 - a. The site is located in an Intensely Developed Area; and
 - b. The activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

Q. Utility Transmission Facilities (7.10)

1. Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
 - a. The facilities are located in Intensely Developed Areas and
 - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. These provisions do not include power plants.

R. Sanitary Landfill; Rubble Fill (8.10)

1. Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

S. Solid or Hazardous Waste Collection or Disposal Facilities (8.20)

1. Solid or hazardous waste collection or disposal facilities, including transfer stations may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

T. Sludge Facilities (8.40)

1. Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:

- a. The facility or activity is located in an Intensely Developed Areas; and
 - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
- 2. Agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.

§8.4 Growth Allocation

§8.4.1 Acreage and Designation

- a. Growth allocation acreage

Growth allocation available to Chesapeake City includes:

- (a) An area equal to five (5) percent of the RCA acreage located within Chesapeake City and;
- (b) Growth allocation available to Chesapeake City as provided for by Cecil County.

- B. Growth Allocation Floating Zone District GA.

- 1. Purpose. The Growth Allocation Floating Zone is not mapped but is designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Area (LDA) within the Chesapeake City Critical Area Overlay District. The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects which have been approved by the Mayor and Council for award of the Critical Area Growth Allocation are eligible for floating zones.
- 2. Designation of floating zones.
 - a. The Growth Allocation District GA shall be a floating zone.
 - b. The Growth Allocation District GA provides for changing the land management classification of Resource Conservation Areas (RCA's) and Limited Development Areas (LDA's) in the Critical Area Overlay District.

§8.4.2 Standards for Designation

- a. When locating new Intensely Developed or Limited Development Areas the following standards shall apply:
 1. A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area;
 2. A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area;
 3. New Intensely Developed Areas shall be at least 20 acres in size unless:
 1. They are contiguous to an existing IDA or LDA; or
 2. They are a grandfathered commercial or industrial use, which existed as of January 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
 4. No more than one-half of the Chesapeake City's growth allocation may be located in Resource Conservation Areas (RCAs) except as provided in subsection (9) below;
 5. New Limited Development Areas or Intensely Developed Areas shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
 6. New Intensely Developed Areas shall only be located where they minimize their impacts to the defined land uses of the Resource Conservation Area (RCA);
 7. New Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;
 8. New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of this Article for such areas, shall be so designated on the Chesapeake City Critical Area Maps and shall constitute an amendment to this Article subject to review by the Chesapeake City Planning Commission and approval by the Mayor and Council and the Critical Area Commission as provided herein.
 9. If Chesapeake City is unable to utilize a portion of its growth allocation as set out in (1) and (2) above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the growth allocation which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allowed in (4) above.

B. Additional Factors

In reviewing map amendments or refinements involving the use of growth allocation the Planning Commission and Mayor and Council shall consider the following factors:

- Consistency with Chesapeake City Comprehensive Plan and whether the growth allocation would implement the goals and objectives of the adopted plan. “Consistency with” means that a standard or factor will further, and not be contrary to the following items in the comprehensive plan:
 - (a) Policies;
 - (b) Timing of the implementation of the plan, of development, and of rezoning;
 - (c) Development patterns;
 - (d) Land uses; and
 - (e) Densities or intensities.
- 2. For a map amendment or refinement involving a new Limited Development Area, whether the development is:
 - (1) To be served by a public wastewater system;
 - (2) A completion of an existing subdivision;
 - (3) An expansion of an existing business; or
 - (4) To be clustered.
- 3. For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
 - (1) To be served by a public wastewater system;
 - (2) If greater than 20 acres, to be located in a designated Priority Funding Area; and
 - (3) To have a demonstrable economic benefit.
- 4. The use of existing public infrastructure, where practical;
- 5. Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
- 6. Impacts on a priority preservation area;

7. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
8. Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development and/or sea level rise.

§8.5 Administration and Enforcement

§8.5.1 Grandfathering

A. Continuation of Existing Uses

1. The continuation, but not necessarily the intensification or expansion, of any use in existence on January 1988 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal Articles.
2. If any existing use does not conform with the provisions of this Article, its intensification or expansion may be permitted only in accordance with the variance procedures in 9.

B. Residential Density on Grandfathered Lots

1. Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Article.
 - (1) A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985.
 - (2) Land that received a building permit subsequent to December 1, 1985, but prior to January 1988.
 - (3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985.
 - (d) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Article or the area of the land has been counted against the growth allocation permitted under this Article.

C. Consistency

Nothing in this Section may be interpreted as altering any requirements of this Article related to water-dependent facilities or Habitat Protection Areas.

§8.5.2 Variances

A. Applicability

Chesapeake City has established provisions where, owing to special features of a site or other circumstances, implementation of this Article or a literal enforcement of provisions within this Article would result in unwarranted hardship to an applicant, a Critical Area variance may be obtained.

1. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of this Article.
2. Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

B. Standards

The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:

1. Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of this Article would result in unwarranted hardship;
2. A literal interpretation of the provisions of this Article will deprive the applicant the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Article to other lands or structures within the Critical Area;
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non-

conforming on any neighboring property; and

5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and this Article.

C. Process

Applications for a variance will be made in writing to the Board of Appeals with a copy provided to the Critical Area Commission. The Board of Appeals shall follow its established procedures for advertising and notification of affected landowners.

1. After hearing an application for a Critical Area variance, the Board of Appeals shall make written findings reflecting analysis of each standard.
2. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the Board of Appeals shall consider that fact.
3. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in A above.
4. The Board of Appeals shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

D. Findings

Based on competent and substantial evidence, the Board of Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in A above, and if applicable B above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- (a) The applicant;
- (b) Town Officials or staff or any other government agency; or
- (c) Any other person deemed appropriate by the Board of Appeals.

E. Appeals

Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Article.

F. Conditions and Mitigation

The Board of Appeals shall impose conditions on the use or development of a property

which is granted a variance as it may find reasonable to ensure that the spirit and intent of this Article is maintained including, but not limited to the following:

1. Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the Planning Commission, but not less than by planting on the site at the rate of at least three to one per square foot of the variance granted.
5. New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

G. Commission Notification.

Within ten (10) working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. No permit for the activity that was the subject of the application will be issued until the applicable 30-day appeal period has elapsed.

§8.5.3 Lot Consolidation and Reconfiguration

A. Applicability

The provisions of this section apply to a consolidation or a reconfiguration of any nonconforming legal grandfathered parcel or lot. These provisions do not apply to the reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area requirements. Nonconforming parcels or lots include:

- i. Those for which a Critical Area variance is sought or has been issued; and
- ii. Those located in the Resource Conservation Area and are less than 20 acres in size.

B. Procedure

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the information required in COMAR 27.01.02.08.E.

1. Chesapeake City will not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.
2. The Planning Commission shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
 - a. After a final written decision or order is issued, the Planning Commission shall send a copy of the decision or order and a copy of any approved development plan within ten (10) business days by U.S. mail to

the Critical Area Commission's business address.

§8.5.4 Amendments

A. Amendments

The Mayor and Council may from time to time amend the Critical Area provisions of this Article. Changes may include, but are not limited to amendments, revisions, and modifications to these zoning regulations, Critical Area Maps, implementation procedures, and local policies that affect Chesapeake City's Critical Area. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in §8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law §8-1809(i) and §8-1809(d), respectively.

B. Zoning Map Amendments

Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by Mayor and Council upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:

- (ii) Are wholly consistent with the land classifications as shown on the adopted Critical Area Overlay Map; or
- (iii) The use of growth allocation in accordance with the growth allocation provisions of this Article is proposed.

C. Process

- (a) When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Mayor and Council.
- (b) Mayor and Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in Chesapeake City.
- (c) After the Mayor and Council approve an amendment, they shall forward their decision and applicable resolutions along with the amendment request to the Critical Area Commission for final approval.

§8.5.5 Enforcement

A. Consistency

The Critical Area provisions of this Article, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Article or plan of Chesapeake City. In the case of conflicting provisions, the stricter provisions shall apply.

B. Violations

1. No person shall violate any provision of this Article. Each violation that occurs and each calendar day that a violation continues shall be a separate offense.
2. Each person who violates a provision of this Article shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.
3. Noncompliance with any permit or order issued by the Town related to the Critical Area shall be a violation of this Article and shall be enforced as provided herein.

C. Responsible persons

The following persons may each be held jointly or severally responsible for a violation: (1) persons who apply for or obtain any permit or approval, (2) contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any person who has committed, assisted, or participated in the violation.

D. Required Enforcement Action

In the case of violations of this Article, the Town shall take enforcement action including:

1. Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and ensuring compliance with these plans;
2. Issue abatement, restoration, and mitigation orders as necessary to:
 - a. Stop unauthorized activity;
 - e. Restore and stabilize the site, as appropriate, to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits; and
3. Require the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation.

E. Right to enter property

Except as otherwise authorized and in accordance with the procedures specified herein, the Mayor and Council or their designee may obtain access to and enter a property in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if the Town has probable cause to believe that a violation of this Article has occurred, is occurring, or will occur. Town officials shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, the Town may seek an injunction to enter the property to pursue an enforcement action.

F. Administrative civil penalties

In addition to any other penalty applicable under State or Town law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18 or Critical Area provisions of this Article shall be punishable by a civil penalty of up to \$10,000 per calendar day.

1. Before imposing any civil penalty, the person(s) believed to have violated this Article shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, the Town shall consider:
 - a. The gravity of the violation;
 - b. The presence or absence of good faith of the violator;
 - c. Any willfulness or negligence involved in the violation including a history of prior violations;
 - d. The environmental impact of the violation; and
 - e. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to Chesapeake City for performing, supervising, or rendering assistance to the restoration and mitigation.
2. Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
3. The person responsible for any continuing violation shall promptly provide the Town with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Town inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until the Town receives such written notice and verifies compliance.

by inspection or otherwise.

4. Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by the Town of all damages, costs, and other expenses caused by the violation.
5. Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Article.

G. Cumulative Remedies

The remedies available to the Town under this Article are cumulative and not alternative or exclusive, and the decision to pursue one remedy does not preclude pursuit of others.

H. Injunctive Relief

1. The Town may institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Article, an administrative order, a permit, a decision, or other imposed condition.
2. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent the Town from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.

I. Variances Pursuant to a Violation

The Town may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or this Article in accordance with the variance provisions of this Article. However, the application shall not be reviewed, nor shall a final decision be made until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town.

J. Permits Pursuant to a Violation.

The Town will not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

1. Fully paid all administrative, civil, or criminal penalties as set forth in §F. above;
2. Prepared a restoration or mitigation plan, approved by the Town, to abate impacts to water quality or natural resources as a result of the violation;
3. Performed the abatement measures in the approved plan in accordance with all Town regulations; and
4. Unless an extension of time is approved by the Town because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

K. Appeals

An appeal to the Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by the Town in connection with the administration and enforcement of this Article.

1. An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions of this Article and accompanied by the appropriate filing fee.
2. An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and
3. An appeal stays all actions by the Town seeking enforcement or compliance with the order or decisions being appealed, unless the Town certifies to the Board of Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by the Town shall not be stayed except by order of a court on application of the party seeking the stay.

§8.6 The 100-Foot Buffer

§8.6.1 Applicability and Delineation

An applicant for a development activity or a change in land use shall apply all of the required standards for a minimum 100-foot Buffer as described in this part. The provisions of this chapter do not apply to an area of the Buffer that is designated as a Buffer Management Area (BMA) under Section 8.6.3. The minimum 100-foot Buffer shall be delineated in the field and shall be shown on all applications as follows:

1. The minimum 100-foot Buffer is delineated based on existing field conditions landward from:
 - a. The mean high water line of tidal water;
 - b. The edge of each bank of a tributary stream; and
 - c. The upland boundary of a tidal wetland.
2. The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in A(1) above and the minimum 200-foot Buffer as described in A(3) below, to include the following contiguous land features:

- a. A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
 - b. A nontidal wetland to the upland boundary of the nontidal wetland;
 - c. The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
 - d. For an area of hydric soils or highly erodible soils, the lesser of:
 - i. The landward edge of the hydric or highly erodible soils; or
 - ii. Three hundred feet where the expansion area includes the minimum 100-foot Buffer.
3. Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include:
- a. An expanded Buffer in accordance with A(2) above; or
 - b. A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and a Buffer of at least 100-feet from a tributary stream, whichever is greater.
4. The provisions of A(3) above do not apply if:
- a. The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010;
 - b. The application involves the use of growth allocation.

§8.6.2 Permitted activities

B. Buffer Disturbance

If approved by the Town, disturbance to the Buffer is permitted for the following activities, provided mitigation is performed in accordance with an approved Buffer Management as required per Section E of this Part:

- 1. A new development or redevelopment activity associated with a water-dependent facility; or
- 2. A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Article;
- 3. A development or redevelopment activity approved in accordance with the variance provisions of this Article;

4. A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:

- a. The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
- b. The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
- c. Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.

B. Buffer Establishment in Vegetation

An applicant for a development activity, redevelopment activity or a change in land use that occurs outside the Buffer, but is located on a on a riparian lot or parcel that includes the minimum 100-foot Buffer, shall establish the Buffer in vegetation if the Buffer is not fully forested or fully established in woody or wetland vegetation. A Buffer Management Plan in accordance with the standards of Section E below is required.

1. The provisions of this section apply to:

(86) Approval of a subdivision;

(87) A lot or parcel that is converted from one land use to another;

(c) Development or redevelopment on a lot or parcel created before January 1, 2010.

2. The provisions of this section do not apply to an in-kind replacement of a structure.

3. When the Buffer is not fully forested or fully established in existing, naturally occurring woody or wetland vegetation, the Buffer shall be established through planting in accordance with COMAR 27.01.09.01-1.

4. The Town may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the Buffer if;

(1) The lot coverage existed before the date of January 1988 or was allowed by local procedures; and

(2) The total area is stabilized with native vegetation.

C. Mitigation for Impacts to the Buffer

An applicant for a development activity that includes disturbance to the Buffer shall

mitigate for impacts to the Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this section.

1. Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, and special exception.
2. All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2H.
3. All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
4. Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, the Town may permit planting in the following order of priority:
 - a. On-site and adjacent to the Buffer; and
 - b. On-site elsewhere in the Critical Area.

D. Buffer Planting Standards.

1. An applicant that is required to plant the Buffer for Buffer establishment or Buffer mitigation shall apply the planting standards set forth in COMAR 27.01.09.01-2 and 4.
2. A variance to the planting and mitigation standards of this Article is not permitted.

E. Required Submittal of Buffer Management Plans.

An applicant that is required to plant the Buffer to meet establishment or mitigation shall submit a Buffer Management Plan as provided in COMAR 27.01.09.01-3 with the application for the specific activity. The provisions of this part do not apply to maintaining an existing grass lawn or an existing garden in the Buffer.

1. A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:
 - i. Fully establishing the Buffer;
 - ii. Partially establishing an area of the Buffer equal to the net increase in lot coverage, or
 - iii. Partially establishing an area of the Buffer equal to the total lot coverage.
2. Any permit for development activity or tree and / or shrub clearing that requires Buffer establishment or Buffer mitigation will not be issued until the Town approves a Buffer Management Plan.

3. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved.
4. The Town will not approve a Buffer Management Plan unless:
 - a. The plan clearly indicates that all planting standards under §D will be met; and
 - b. Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
5. For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
 - a. Completes implementation of a Buffer Management Plan; or
 - b. Provides financial assurance to cover the costs for:
 - i. Materials and installation; and
 - ii. If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
6. Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
7. If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Article.
 - (d) A permit for development activity will not be issued for a property that has the violation.
8. An applicant shall post the property proposed for subdivision with durable signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
9. Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4

F. Fees-In-Lieu of Buffer Mitigation

A fee in-lieu of mitigation will be collected if the planting requirements of the Buffer Management Plan cannot be fully met onsite in accordance with the following standards:

- (27) Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to Chesapeake City's general fund;
- (28) Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer mitigation;

(29) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and

(30) Fee-in-lieu monies shall be used for the following projects:

- (1) To establish the Buffer on sites where planting is not a condition of development or redevelopment;
- (2) For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between the Town and the Critical Area Commission.

G. Shore Erosion Control Projects

Shore erosion control measures are permitted activities within the Buffer in accordance with the following requirements:

- i. An applicant for a shore erosion control project that affects the Buffer in any way, including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a Buffer Management Plan in accordance with the requirements of this section; and
- ii. Comply fully with all of the policies and criteria for a shore erosion control project stated in COMAR 27.01.04 and COMAR 26.24.06.01.

§8.6.3 Buffer Management Area (BMA) Provisions

A. Development and Redevelopment Standards.

New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer in a designated BMA unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission finds that efforts have been made to minimize Buffer impacts and the development complies with the following standards:

2. Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
3. Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
4. Commercial, industrial, institutional, recreational and multi-family residential development and redevelopment shall meet the following standards:

- a. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.
 - b. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the minimum setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the footprint of an existing structure.
- 4. Single family residential development and redevelopment shall meet the following standards:
 - a. New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the minimum setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
 - b. Existing principal or accessory structures may be replaced in the same footprint.
 - c. New accessory structures may be located closer to the water than the setback if the Planning Commission has determined there are no other locations for the structures. The area of new accessory structures shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total in the Buffer.
- 5. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.
- 6. Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- 7. Buffer Management Area (BMA) designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- 8. No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- 9. Mitigation for development or redevelopment in the in the BMA approved under the provisions of this subsection shall be implemented as follows:

- a. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the Planning Commission.
- b. Applicants who cannot fully comply with the planting requirement in §(a) above, may use offset by removing an equivalent area of existing lot coverage in the Buffer.
- c. Applicants who cannot comply with either the planting or offset requirements in §(a) or §(b) above shall pay into a fee-in-lieu program as follows:
 - i. Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a one year survival guarantee.

(88) The Planning Commission shall determine the amount of the fee-___in-lieu based on the average of the two estimates.

f. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Chesapeake City's Critical Area Program. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported in the jurisdiction's quarterly reports.

g. Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument approved by the Town and recorded among the land records of the County.

§8.7 Other Habitat Protection Areas

§8.7.1 Identification

An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this section. Habitat Protection Areas include:

- Threatened or endangered species or species in need of conservation;
- Colonial waterbird nesting sites;
- Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
- Existing riparian forests;
- Forest areas utilized as breeding areas by future interior dwelling birds and other wildlife species;
- Other plant and wildlife habitats determined to be of local significance;
- Natural Heritage Areas; and
- Anadromous fish propagation waters.

§8.7.2 Standards

- A. An applicant for a development activity proposed for a site within the Critical Area that is in or near a Habitat Protection Area listed above shall request review by the Department of Natural Resources Wildlife and Heritage Service for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.
- B. If the presence of a Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall develop a Habitat Protection Plan in coordination with the Department of Natural Resource.
- C. The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

§8.8 Critical Area Definitions

The following words have the following meanings for the purposes of interpreting and implementing only Article 8 of this Ordinance, the Critical Area Program. The singular always includes the plural, and vice versa, except where such construction would be unreasonable:

1. "Abatement" means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.
2. "Accessory structure" means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to a principal structure, or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.
3. "Addition" means newly constructed area that increases the size of a structure.
4. "Afforestation" means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.
5. "Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.
6. "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
7. "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
8. "Anadromous fish propagation waters" means those streams that are tributary to the Chesapeake Bay and Atlantic Coastal bays in which the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.
9. "Aquaculture" means: (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

10. "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.
11. "Buffer" means area that is based on conditions at the time of development is immediately landward from mean high water of tidal waterways, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and the area exists in, or is established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also include any expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.
12. "Buffer Management Area (BMA)" means an area officially mapped by the Town of Chesapeake City and approved by the Critical Area Commission as a BMA, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development prevents the Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific BMA provisions can be permitted in the Buffer without a variance.
13. "Buffer Management Plan" means a narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will: affect a portion of the Buffer; alter buffer vegetation; or require the establishment of a portion of the Buffer in vegetation. A Buffer Management Plan includes a major buffer management plan, a minor buffer management plan, and a simplified buffer management plan.
14. "Bufferyard" means an area at least 25 feet wide, located between development activity and tidal waters, tidal wetlands, or a tributary stream, planted with vegetation consisting of native canopy trees, understory trees, shrubs, and perennial herbaceous plants that is used in Buffer Management Areas to provide water quality and habitat benefits. This area is to be managed and maintained in a manner that optimizes these benefits.
15. "Caliper" means the diameter of a tree measured at two inches above the root collar.
16. "Canopy tree" means a tree that when mature commonly reaches a height of at least 35 feet.
17. "Cluster development" means a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.
18. "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.
19. "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.

20. "Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
21. "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.
22. "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.
23. "Conservation easement" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.
24. "Consolidation" means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. An application for consolidation may include a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.
25. "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
- (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;
 - (b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
 - (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
 - (d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.
26. (26) "Density" means the number of dwelling units per acre within a defined and measurable area.
27. "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development
28. "Developer" means a person who undertakes development activity as defined in this Program; or a person who undertakes development activity as defined in the Criteria of the Commission.

29. "Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures and/or the substantial alteration of the land, including the shoreline and land underwater.
30. "Disturbance" means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintaining an existing grass lawn.
31. "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.
32. "Dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.
33. "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.
34. "Endangered species" means any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, 16 U.S.C. §et seq., as amended.
35. "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.
36. "Excess stormwater run-off" means all increases in stormwater resulting from:
37. An increase in the imperviousness or lot coverage of the site, including all additions to buildings, roads, and parking lots;
38. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
39. Alteration of drainage ways, or regrading of slopes;
40. Destruction of forest; or
41. Installation of collection systems to intercept street flows or to replace swales or other drainage ways.
42. "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the Town of Chesapeake City.
- a. "Fully established" means the buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.

43. "Fisheries activities" means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.
44. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50% of those trees having two-inch or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.
45. "Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).
46. "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.
47. "Grandfathered parcel" or "Grandfathered lot" means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.
48. "Growth allocation" means the number of acres of land in the Critical Area that the Town of Chesapeake City may use to create new Intensely Developed Areas and new Limited Development Areas. The Growth Allocation is five percent of the total Resource Conservation Area acreage in the Town of Chesapeake City at the time the Critical Area Commission approved the Town's original Critical Area Program, not including tidal wetlands or land owned by the federal government.
49. "Habitat Protection Plan" means a plan that provides for the protection and conservation of the species and habitats identified as Habitat Protection Areas in the Critical Area. The plan shall be specific to the site or area where the species or its habitat is located and shall address all aspects of a proposed development activity that may affect the continued presence of the species. These include, but are not limited to, cutting, clearing, alterations of natural hydrology, and increases in lot coverage. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be effectively implemented on the specific site.
50. "Highly erodible soils" means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.
51. "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.
52. Home improvement"
53. "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils.

54. "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).
55. "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.
56. "In-kind replacement" means the replacement of a structure with another structure that is smaller than or identical to the original structure in footprint area, width, length, and use.
57. "Intensely Developed Area" means an area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where: residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: an area with a housing density of at least four dwelling units per acre; an area with public water and sewer systems with a housing density of more than three dwelling units per acre.
58. "Invasive species" means a species that is non-native or alien to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
59. "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value, that is experimentally determined.
60. "Land clearing" means any activity that removes the vegetative ground cover.
61. "Landward edge" means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.
62. "Large shrub" means a shrub that, when mature, reaches a height of at least six feet.
63. "Legally developed" means all physical improvements to a property that existed before Critical Area Commission approval of a local Program, or were properly permitted in accordance with the provisions of the local Program in effect at the time of construction.
64. "Limited Development Area" means an area: with a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or that is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Program.
65. "Living shoreline" means a suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.

66. "Local significance" means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Program of the Town of Chesapeake City; and is not considered to be major development as defined in this Program.
67. "Lot coverage" means the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material. Lot coverage includes the ground area covered or occupied by a stairway or impermeable deck, but does not include: a fence or wall that is less than one foot in width that has not been constructed with a footer; a walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; a wood mulch pathway; or a deck with gaps to allow water to pass freely.
68. "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
69. "Major development" means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.
70. "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
71. "Mitigation" means an action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.
72. "Native plant" means a species that is indigenous to the physiographic area in Maryland where the planting is proposed.
- a. "Natural features" means components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.
 - b. "Natural forest vegetation" means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in the State of Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this ordinance shall resemble the structure and species composition of natural forests.
73. "Natural Heritage Area" means any communities of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

74. "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.
75. "Natural vegetation" means those plant communities that develop in the absence of human activities.
- a. Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.
76. "New development" means that for purposes of implementing specific provisions of this Program, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent as of December 1, 1985.
77. "Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.
78. "Non-tidal wetlands" means those areas regulated under Subtitle 9 of the Environment Article that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended. Nontidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.
79. "Offsets" means structures or actions that compensate for undesirable impacts.
80. "Open space" means land and water areas retained in an essentially undeveloped state.
81. "Palustrine" means all non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.
82. "Permanent disturbance" means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. "Permanent disturbance" includes:
- (i) Construction or installation of any material that will result in lot coverage;
 - (ii) Construction of a deck;
 - (iii) Except under §B (18-2)(b)(iii) of this regulation, grading; and
 - (iv) Except under §B (18-2)(b)(ii) of this regulation, clearing of a tree, forest, or developed woodland.

83. "Permanent disturbance" does not include a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required.
84. "Person" means an individual, partnership, corporation, contractor, property owner, or any other person or entity.
85. "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
86. "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
87. "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
88. "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.
89. "Principal structure" means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.
90. "Program amendment" means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a Program refinement.
91. "Program refinement" means any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted Program, or that will not significantly affect the use of land or water in the Critical Area. Program refinement may include:
- A change to an adopted Program that results from State law;
 - A change to an adopted Program that affects local processes and procedures;
 - A change to a local ordinance or code that clarifies an existing provision; and
 - A minor change to an element of an adopted Program that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Commission.
92. "Project approvals" means the approval of development, other than development by the State or local government, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

93. "Property owner" means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.
94. "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.
95. "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including water bodies.
96. "Reconfiguration" means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. An application for reconfiguration may include a subdivision, a lot line adjustment, a boundary line adjustment, a replatting request, or a revision of acreage to increase density.
97. "Redevelopment" means the process of developing land which is or has been developed. For purposes of implementing specific provisions of this Program, redevelopment (as opposed to new development) means a development activity that takes place on property with pre-development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent or greater.
98. "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
99. "Resource Conservation Area" means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource conservation areas include areas with a housing density of less than one dwelling per five acres.
100. "Resource utilization activities" means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.
101. "Restoration" means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.
102. "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
103. "Road" means a public thoroughfare that is under the jurisdiction of the State, a county, a municipal corporation, or any other public body. Road does include a drive aisle or driveway.
104. "Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.
105. "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

106. "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.

107. "Significantly eroding areas" means areas that erode two feet or more per year.

108. "Small shrub" means a shrub that, when mature, reaches a height no greater than six feet.

109. "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland.

110. "Steep slopes" means slopes of 15 percent or greater incline.

111. "Structure" means anything constructed or erected on or over land that may or may not result in lot coverage. "Structure" means building or construction materials, or a combination of those materials that are purposely assembled or joined together on or over land or water. "Structure" includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.

112. "Substantial alteration" means any repair, reconstruction, or improvement of a principal structure, where the proposed footprint equals or exceeds 50 percent of the existing principal structure.

113. "Supplemental planting plan" means a description and landscape schedule that shows the proposed species type, quantity, and size of plants to be located within a Buffer if natural regeneration does not meet the required stem density.

114. "Temporary disturbance" means a short-term change in the landscape that occurs as part of a development or redevelopment activity. "Temporary disturbance" includes:

- (i) Storage of materials that are necessary for the completion of the development or redevelopment activity;
- (ii) Construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity, if the road or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition; and
- (iii) Grading of a development site, if the area is restored to its previous vegetative condition immediately after completion of the development or redevelopment activity.

115. "Temporary disturbance" does not include:

- (i) A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required; and
- (ii) A violation.

116. "Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.
117. "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources that appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C. § 1431 et seq., as amended.
118. "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.
119. "Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.
120. "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.
121. "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local program procedures approved by the Critical Area Commission.
122. "Understory" means the layer of forest vegetation typically located underneath the forest canopy.
123. "Understory tree" means a tree that, when mature, reaches a height between 12 and 35 feet.
124. "Unwarranted hardship" means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested."
125. "Upland boundary" means the landward edge of a tidal wetland or nontidal wetland.
126. "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
127. "Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.
128. "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.

129. "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

130. "Waterfowl" means birds that frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

131. "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife.

132. "Wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area.

Article 9

Terms and Definitions

§9.1 Rules for Defining Terms

§9.1.1 Defined Words Have Meaning Provided

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Ordinance.

§9.1.2 Rules

- Words used in the present tense shall include the future tense; words used in the singular number shall include the plural number, and the plural number shall include the singular number, unless the obvious construction of the wording indicates otherwise.
- The word “shall” is mandatory and not discretionary.
- The word “may” is permissive.
- The word “lot” shall include the words “piece”, “parcel” and “plots”; the word “building” includes all other structures of every kind regardless of similarity to buildings; and the phrase “used for” shall include the phrase “arranged for” and “occupied for”.
- All “measured distances” shall be to the nearest “integral foot”. If a fraction has a value of one-half foot or greater, the “integral foot” next above shall be taken.

§ 9.2 Terms and Definitions

Accessory Apartment-a separate complete housekeeping unit that is substantially contained within the structure of a single family unit or a commercial structure, but can be isolated from it.

Accessory Building -an accessory building is a subordinate building or a portion of the main building, the use of which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Ordinance) located on the same lot as the main building or principal use of the land.

Accessory Use-an accessory use is one which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Ordinance) on the same lot as the principal use of the premises. When "accessory" is used in the text, it shall have the same meaning as "Accessory Use".

Acreage-A parcel of land, regardless of area, described by metes and bounds, which is not a numbered lot on any recorded subdivision.

Activity-Any business, industry, trade, occupation, vocation, profession, or other use conducted or carried on either within a building or covered area, or outdoors on any tract or parcel of land. For zoning purposes, an activity shall be considered separately from any building or structure in which such activity may be conducted.

Alley-a narrow public thoroughfare which provides only a secondary means of access to abutting properties and is not intended for general traffic circulation.

Alteration-Any change in the total floor area, use adaptability or external appearance of an existing structure.

Amend or amendments-Any repeal, modification or addition to a regulation; any new regulation; any change in the number, shape, boundary or area of a zone; or any repeal or abolition of any map, part thereof or addition thereto.

Antenna-Equipment designed to transmit or receive electronic signals.

Apartment-A part of a building containing cooking facilities and separate bathroom facilities consisting of a room or group of rooms intended, designed, and used as a residence by an individual or a single family.

Apartment House-same as "Dwelling, Multiple-Family".

Area-Gross-all the area within a development plan or plat including area intended for residential use, local access streets or alleys, off-street parking spaces, recreation areas, or floodplains.

Arterial Road-A highway, road, or street designated as an arterial or minor arterial in the Town's adopted Comprehensive Plan.

Automobile Filling Station-Any building, structure or area of land used for the retail sale of automobile fuels, oils, power, and accessories and where repair service, if any, is incidental.

Basement-that portion of a building between the floor and ceiling which is wholly or partly below grade and having more than ½ of its height below grade.

Bed and Breakfast Facility-a private home which is occupied by the owner of the facility in which bedrooms are rented to tourists or travelers and in which breakfast is provided and included in the room rate.

Billboard-a structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located, not including painted walls.

Block-a tract of land bounded by streets, or by a combination of streets, alleys, public parks, cemeteries, shorelines or boundary lines of the Town.

Board-the Board of Appeals of the Town of Chesapeake City which is authorized with certain powers by this Ordinance including to grant special exceptions and variances and to hear appeals from administrative decisions.

Boarder-a person who is given lodging with or without food by someone in exchange for a fee.

Boarding House- an owner-occupied single-family dwelling where, for compensation and by prearrangement for definite periods, lodging, meals, or lodging and meals are provided for three or more boarders but containing no more than four guest rooms or rental units.

Building-any structure having a roof supported by columns or walls for the housing or enclosure of persons or property of any kind.

Building, Accessory-A minor building that is located on the same lot as a principal building and is used incidentally to a principal building or houses an accessory use.

Building, detached-a building surrounded by open space on the same lot.

Building, floor area of-the total number of square feet area in a building, excluding cellars, uncovered steps, and uncovered porches, but including the total floor area of accessory buildings on the same lot.

Building height-the vertical distance measured from the average elevation of the finished grades along the front of the building to either the highest point of the roof for "flat roofs" or the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof. For the purposes of determining building height, at no point must the finished grade be higher than the pre-development grade and building height shall be measured in this way irrespective of compliance with the floodplain ordinance.

Building line-A line beyond which the foundation wall and/or any porch, vestibule, or other portion of a building shall not project, unless otherwise provided for in this Ordinance.

Building, Main-any building which is not an accessory building.

Building Permit-a permit issued by the Zoning Administrator or other officially authorized representative of the Town of Chesapeake City.

Building, Principal-the primary building on a lot or a building that houses a principal use.

Canopy-a roof-like structure of a permanent nature which may be free-standing or projected from a wall of a building or its supports.

Certify-whenever this Ordinance requires that some agency certify the existence of some fact or circumstance to the Town, the Town may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. This may include a certified letter, or if the Town agrees, facsimile, electronic mail, or other similar manner that will produce a "hard copy" of said certification.

Circulation Area-that portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

Civic (lot type)- pertaining to governmental and/or community related activities and uses including institutional uses and activities.

Clinic-an office building or a group of offices for one or more physicians, surgeons, or dentists, engaged in treatment of the sick or injured but not including rooms for overnight patients.

Club, Private-buildings and facilities owned or operated by a corporation, association, person, or persons, for social, educational or recreational purpose, but not primarily for profit which accrues to any individual and not primarily to render a service which is customarily carried on a business.

Collector-A highway, road, or street designated as a major collector or minor collector in the Town's adopted Comprehensive Plan.

Commission-the Planning Commission of the Town of Chesapeake City.

Commercial-a type of activity where goods or services are sold or traded with the expectation of profit or gain.

Common Area-any open space, private road or other land, structure or improvement, which is designed or reserved for the common use or benefit of the owners of two or more lots. "Common area" does not include any public road or other land, structure or improvement owned by the Town or the State of Maryland or any other governmental agency.

Comprehensive Plan/The Comprehensive Plan of Chesapeake City, Maryland-a document consisting of written and mapped information, adopted by the Mayor and Town Council, and intended to guide the physical development of Chesapeake City, including all changes and additions to the plan.

Condominium-a form of ownership consisting of an undivided interest in common with other owners in a portion of a parcel of real property, together with separate interest in space in a building, such as a townhouse, apartment or office, established pursuant to Maryland law. A condominium may include, in addition, a separate interest in other portions of such real property.

Conservation Easement-A non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

Construction, Actual-includes the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

Council-Mayor and Town Council of Chesapeake City, Maryland.

Nursing Care Institutions-a building where regular nursing care is provided for more than one person not a member of the family, who resides on the premises.

Covenant-a written undertaking by an owner which is required by this Ordinance or imposed by the Planning Commission in accordance with authorization contained in this Ordinance.

Covenanter-a person who owns legal or equitable title to any land which is affected in any manner by a covenant and includes a person who holds any mortgage, deed of trust or other lien or encumbrance on any such land.

Court-an unoccupied open space, other than a yard, on the same lot with a building, which is bounded on two or more sides by the walls of such building.

Coverage, building-the percentage of the lot covered by buildings and structures.

Critical Area-all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State Wetlands Maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland.
- c. Modifications to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Critical Areas Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Day Care Center or Day Nursery- a child boarding home, day camp, summer camp, foster home, or other place for the reception, board, or care for compensation of children under fourteen years of age. This definition shall not include public or private schools organized, operated, or approved under Maryland laws, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage within the third degree to the custodial person, or to churches or other religious or public institutions caring for children within the institutional building while their parents or legal guardians are attending services, activities, or meetings.

Day Care, Home-a facility operated in a residence by the owner of the residence limited to seven people, excluding residents, where care is given to children under the age of 18, or persons with physical handicaps, or persons in need of oversight because of advanced age, or mental retardation or other disability, and which routinely involves care and housing for less than 18 hours per day per person.

Dedication-the transfer of property from private to public ownership as may be required to provide for the public health, safety, or welfare.

Deed Restriction-a private legal restriction and/or covenant on the use of land, contained within a deed of property or otherwise formally recorded in the Land Records of Cecil County, Maryland. These restrictions or covenants are designed to control the use of specific property and enforcement of these is through private civil action. Deed restrictions are not enforced by the Town of Chesapeake City, unless it is Chesapeake City, Maryland that records said deed restrictions.

Density-the number of principal dwelling units allowed per acre of gross area of a development.

Developer-a person who is responsible for any undertaking that requires a zoning permit, conditional-use permit, sign permit, site plan, or subdivision approval.

Development or Development Activities (includes the term "develop")-any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land or action that results in

construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land.

District-any section of the Town of Chesapeake City within which the zoning regulations are uniform.

Drive-in-A place of business being operated for the retail sale of food and other goods, services, or entertainment. It is designed to allow its patrons to be served or accommodated while remaining in their automobiles or allows the consumption of any food or beverage obtained from a carry-out window in automobiles or elsewhere on the premises.

Driveway-that portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

Duplex-a two-family residential use in which the dwelling units share a common wall (including without limitation the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.

Dwelling-any building or portion thereof, designed or used for residential purposes, except trailers or mobile homes.

Dwelling, attached-A dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

Dwelling, Single-Family-a building designed for or occupied exclusively by one family.

Dwelling, Two-Family-a building designed for or occupied exclusively by 2 families living independently of each other.

Dwelling Unit-a room or group of rooms occupied or intended to be occupied as separate living quarters by a single family or other group of persons living together as a household or by a person living alone.

Dwelling, Multi-Family-a structure arranged or designed to be occupied by 3 or more families on a single parcel or on contiguous parcels under the same ownership.

Earth Satellite Antenna (also called "satellite dish" or "dish")-a parabolic dish antenna or other device or equipment of whatever nature or kind, including its structural supports, the primary use of which is to receive television, radio, microwave, or other electronic signals from space satellites.

Family-one or more persons occupying a single housekeeping unit and using common cooking facilities, provided that unless all members are related by blood or marriage, no such family shall contain over 4 persons.

Farmers Market-a retail market selling predominantly locally produced fruits, vegetables, crafts, and meats.

Fence or Wall-any structure regardless of composition, except a living fence, that is erected or maintained for the purpose of, marking a boundary, enclosing an area, providing screening or privacy, restricting access or egress, or dividing a piece of land into distinct portions.

Fence Height - the distance measured from the existing grade to the top of the fence at its highest point.

Floor Area:

- a. Commercial business and industrial buildings or buildings containing mixed uses: the sum of the gross horizontal area of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two

buildings but not including (a) space providing headroom of less than seven feet; (b) basement space not used for retailing; (c) uncovered steps or fire escapes; (d) accessory water towers or cooling towers; (e) accessory off-street parking spaces; and (f) accessory off-street loading berths.

- b. Residential buildings: the sum of the gross horizontal areas of the several floors of a dwelling measured from the exterior faces of the exterior walls.

Frontage:

- a. Street frontage: all of the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.
- b. Lot frontage: the distance for which the front boundary line of the lot and the street line are coincident.

Garage, private-a garage used for storage purposes only and having a capacity of not more than 4 vehicles.

Garage, service-a building, or portion thereof, other than a private or storage garage, designed or used for equipping, servicing, repairing, hiring, selling, or storing motor-driven vehicles.

Garage, storage-a building, or portion thereof, designed or used exclusively for storage of motor-driven vehicles and where motor-driven vehicles are not equipped, hired, or sold.

Grandfathered-the term describes the status accorded certain properties and development activities that are of record prior to the date of adoption of this Ordinance or provisions of this Ordinance.

Golf Course-an area publicly or privately owned, on which the game of golf is played, containing at least 9 holes; together with such necessary and usual accessory uses as a club house, caretakers' dwellings, dining and refreshment facilities, and other such uses, provided that the operation of such facilities is incidental and subordinate to the operation of a golf course.

Group Home-a residential structure that is licensed as a residential care facility or child foster care facility under Maryland law to provide room, board, and supervised and/or medical care, for no more than five residents.

Halfway House-a residential structure limited to five persons that is authorized to be a facility where persons are aided in readjusting to society following a period of imprisonment, hospitalization, or institutionalized treatment.

Home Occupation-any occupation or activity, which is clearly incidental and secondary to use of the premises for dwelling and, which is carried on wholly within a main building by a member of a family residing on the premises. When within the above requirements, a home occupation includes, but is not limited to the following: (a) art studio; (b) dressmaking; (c) professional office of a physician, dentist, lawyer, engineer, architect, accountant, sales-person, real estate agent, insurance agent, or other similar occupation; (d) teaching, with musical instruction limited to 1 or 2 pupils at a time; however, a home occupation shall not be interpreted to include tourist homes, animal hospitals, child or day care centers, tea rooms, or restaurants.

Hotel-a building in which lodging or boarding and lodging are provided for more than 20 persons, primarily transient, and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public as

opposed to a boardinghouse, which is herein separately defined. A hotel may include restaurants, taverns, club rooms, banquet halls, ballrooms, and convention facilities.

Illumination-direct artificial lighting or indirect artificial lighting designed to reflect light from light sources erected for the purposes of providing light to a sign, surface, or other structure.

Impervious Surface-any surface installed on a lot that is resistant to the penetration of water.

Intermediate Care Institutions-an institutional facility licensed by Maryland law providing accommodations for more than seven persons needing medical care at a level lower than provided at nursing care institutions.

Intermittent Stream-a stream in which surface water is absent during part of the year. Intermittent streams may be found on the most recent U.S.G.S. 7.5 Minute Quadrangle published by the United States, the Cecil County Soil Survey, or field located. Intermittent streams shall be identified in the field and accurately drawn on all development plans.

Kennel/Cattery-any establishment for the commercial breeding, boarding, grooming, sale or training of dogs and/or cats for which a fee is charged and more than 6 dogs or cats are kept on the premises.

Loading Space-a space within the main building or on the same lot, providing for the standing, loading or unloading of trucks.

Lot-an area of land separated from other areas of land by separate description in a recorded deed of plat.

Lot, Area-the total horizontal area within the lot lines of the lot.

Lot, Corner-a lot located at the intersection of 2 or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

Lot, Depth of-the mean horizontal distance between the front and rear lot lines.

Lot, Interior-a lot other than a corner lot.

Lot, Reversed Frontage-a lot in which the frontage is at right angles to the general pattern in the area involved. A reversed frontage lot may also be a corner lot or an interior lot.

Lot Line-the boundary line of a lot.

Lot, through-an interior lot having frontage on 2 streets.

Lot Width-the distance between the side lot lines measured at the required front yard line.

Lot of Record-a parcel of land which has been legally recorded in the land records of Cecil County.

Marina and marina uses-any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other noncommercial boat docking and storage facilities.

Marquee-a roof-like structure of a permanent nature which projects from the wall of a building or its supports and may overhang the public way.

Motel-same as "Hotel" except that the building or buildings are designed primarily to serve tourists traveling by automobile and that ingress and egress to rooms need not be through a lobby or offices.

Natural Features-components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Natural Vegetation-plant communities that develop in the absence of human activities.

Neighborhood, Essential Services-any utility facility needed to provide basic services such as water, sewer, telephone, and cable television to the individual users.

Nightclub-a commercial establishment maintained for general patronage where food and drink are served or dispensed and where either of the following is allowed (1) live, recorded or televised entrainment, and (2) dancing.

Non-Tidal Wetlands-an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation, and is determined according to the Corps of Engineers Wetland Delineation Manual, 1987, as amended.

Nursing Care Institution -an institutional facility maintained for the purpose of providing skilled nursing care and medical supervision, at a lower level than that available in a hospital, in addition to room and board.

Occupancy, Certificate of- the certificate signed by the Zoning Administrator and issued by the Cecil County Department of Permits and Inspections which permits the use of a building in accordance with approved plans and specifications and which certifies compliance with the provisions of the law for the use and occupancy of the building as specified in the Cecil County Building Code and this Ordinance.

Office, General-an office for the use of (a) professional people such as doctors, lawyers, accountants, etc., or (b) general business offices such as insurance companies, trade associations, manufacturing companies, investment concerns, banks and trust companies, real estate companies, etc., but not including any kind of retail or wholesale store or warehouse, except as otherwise provided herein.

Off-Street Parking Area-space provided for vehicular parking not on a street or roadway.

Open Space, Useable-that area within the boundaries of a lot that is intended to provide light and air, and is designed for either scenic or recreational purposes. Open space shall, in general, be available for entry and use by the residents or occupants of the development, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness. Open space may include, but not be limited to, buffers and buffer yards, lawns, decorative planting, walkways, active and passive recreation areas, children's playgrounds, fountains, swimming pools, wooded areas, and watercourses. Open space shall not include driveways, parking lots or other vehicular surfaces, any area occupied by a building, nor areas so located or so small or so circumscribed by buildings, driveways, parking lots, or drainage areas, as to have no substantial value for the purpose stated in this definition.

Outbuilding-a separate accessory building or structure not physically connected to the principal building.

Parapet-the extension of the main walls of a building above the roof.

Parking Area, Lot, or Structure-a structure, or an off-street area for parking or loading and unloading, whether required or permitted by this Zoning Ordinance, including driveways, access ways, aisles, and maneuvering areas, but not including any public or private street right-of-way.

Parking Area Aisles-a portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

Parking, Floor Area-the floor area of a structure as defined herein less storage and warehouse areas used principally for non-public purposes of said structure. Any basement or cellar space used for retailing shall be included in the parking floor area for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.

Parking Space, Off-street-an all-weather surfaced area not in a street or alley exclusive of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather surfaced driveway which affords satisfactory ingress and egress for automobiles. At a minimum each parking space shall comprise 180 square feet.

Perennial Stream-a stream containing surface water throughout an average rainfall year. Perennial streams may be found on the most recent U.S.G.S. 7.5 Minute Quadrangle published by the United States, the Cecil County Soil Survey, or field locates. Perennial streams shall be identified in the field and accurately drawn on all development plans.

Person-an individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity acting as a unit.

Place-an open, unoccupied space other than a street or alley, permanently established or dedicated in the principal means of access to property abutting thereof.

Plot-parcel of land which may include one or more platted lots occupied or intended for occupancy by a use permitted in this Ordinance including one main building together with its accessory buildings; the yard areas and parking spaces required by the Ordinance and having its principal frontage upon a street or upon an officially approved place.

Premises-a lot, together with all buildings and structures thereon.

Property Lines-The lines bounding a lot as defined herein.

Pub- an establishment used primarily for the serving of liquor by the drink to the general public, and where food is regularly served as part of the fare.

Public Way-any sidewalk, trail, street, alley, highway, or other public thoroughfare.

Public Water and Sewerage Systems-water or sewerage system owned and operated by a municipality or county or an authority or owned and operated by the governing body and permitted by the State of Maryland, and subject to special regulations.

Public Utilities-Uses or structures for the public purpose of power transmission and distribution (but not power generation); natural gas transmission and distribution (but not manufacture or storage); water treatment and distribution; sewage collection and treatment; telephone service facilities; radio and television facilities (not including broadcasting studios); and rail or road rights-of-way (not including stations or terminals).

Recreation Facility-a place designated and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities.

Redevelopment-the process of developing land that is or has been developed.

Regulations-the whole body of regulations, text, charts, tables, diagrams, maps, standards, notations, references, and symbols, contained or referred to in this Ordinance.

Residence, Multi-Family-a residential use consisting of a building containing three or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor or wall (even the wall of an attached garage or porch) (e.g. townhouses and apartments).

Residence, Primary with Accessory Apartment-a residential use having the external appearance of a single-family residence but in which there is located a second dwelling unit that comprises not more than 25 percent of the gross floor area of the building nor more than a total of 750 square feet.

Resort-a building or group of buildings containing guest rooms on a site, a large portion of which is devoted to recreational activities such as tennis, horseback riding, swimming, golf. A resort may furnish services customarily furnished by a hotel including restaurants, taverns, and convention facilities.

Restaurants:

- a. Restaurant, standard-A food serving establishment whose principal business is the sale of food and the principal method of operation is its service when ordered from a menu to seated customers at a table, booth or counter inside the establishment. A snack bar or refreshment stand at a public or nonprofit community swimming pool, playground or park, operated solely for the convenience of its patrons shall not be considered a restaurant.
- b. Restaurant, fast food-an establishment where ready-to-eat food primarily intended for immediate consumption is available upon a short waiting time and wrapped or presented so that it can readily be eaten outside or inside the premises.
- c. Restaurant, drive-in or drive-thru-any establishment where ready-to-eat food primarily intended for immediate consumption is available upon a short waiting time and packaged or presented so that it can be readily eaten inside the premises and whose method of operation is also to serve customers in motor vehicles either at a drive-thru window or while parked.

Retail Shops-stores selling one kind or various kinds of goods, as distinct from services, such as, but not limited to, drug stores, grocery stores, department stores, camera shops, book stores, and record shops.

Right-of-Way-a strip of land designated for the use of a road, highway, driveway, alley or walkway, or for any drainage or public utility purpose or other similar uses.

Satellite Dish (Receive-Only Earth Station)-a device or instrument, designed or used for the reception of television or other electronic communications signal broadcast or relayed from an earth satellite, typically up to twelve feet in diameter, in the shape of a shallow dish or parabola.

Seat-for the purpose of determining the number of off-street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated, or each 24 lineal inches of benches, pews, or space for loose chairs.

Setback-the minimum required distance between the point where any structure or use on a lot meets the ground surface and any lot line or boundary of a Town or State road right-of-way.

Shed-a portable, non-permanent structure, installed without footers, used for the storage of items such as gardening equipment or home repair tools and supplies.

Sight Visibility Triangle-a triangular space provided across all property corners created by either the intersections of two streets or the intersection of a driveway and a street. It is determined by drawing a diagonal line across the corner of the lot measured from two points drawn twenty five feet back from the street or driveway intersection with the street.

Sign-a structure or device, in whole or part, which uses symbolic representations to direct attention to, identify or advertise any activity, person, group of people or thing.

Sign Height, maximum sign-the distance from the top of the sign to the unfinished grade of the ground at the base of the sign. For freestanding (monument signs), the height includes the base of the sign.

Sign, Internally lighted-a sign that produces light within itself and includes signs that consist of, in whole or in part, exposed glass tubing containing either neon, argon, or other material, regardless of whether the exposed glass material is located inside the window of the use or outside the use to which it refers.

Sign, Temporary sign- any sign which has for its purpose the advertising, announcement or display of information pertaining to an event, condition or situation that is intended to be limited in scope, duration, or time, including, but not limited to, commercial sales events, concerts, plays, on-premise real estate advertisement, on-premise advertisement of contractor lawfully engaged at site, and other commercial or cultural events.

Sign, Portable sign-a sign that is easily and conveniently transported or capable of being carried or move about.

Site Plan-a drawing or plat which describes and locates required improvements of a development tract.

Special Events-circuses, fairs, carnivals, festivals, or other types of special events that (a) run for longer than one day but not longer than two weeks, (b) are intended to or likely to attract substantial crowds, and (c) are unlike the customary or usual activities generally associated with the property where the special event is to be located.

Special Exception-permission by the Board of Appeals to establish a specific use that would not be appropriate generally or without restriction throughout a zoning district but which if controlled as to number, area, location, or relation to the neighborhood, would comply with the purpose and intent of this Ordinance.

State Tidal Wetland-any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Tidal wetlands of this category which have been transferred by the State by a valid lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights are considered "private tidal wetlands" to the extent of the interest transferred.

Steep Slopes-any slope with a grade of 15 percent or more.

Storage-the keeping, either indoors (including inside a cargo trailer) or outdoors, of equipment, vehicles, or supplies used in the conduct of a trade, business, or profession. Storage does not include the overnight parking in residential zones of a single vehicle weighing no more than 2.5 tons gross vehicle weight which, although used primarily for business, trade, or professional purposes, also provides daily transportation to and from work.

Stormwater Management- for quantitative control, a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; and for qualitative control, a system of vegetative, structural, and other measures that reduce or eliminated pollutants that might otherwise be carried by surface runoff.

Story-that portion of a building other than a basement, included between the surface of any floor and the surface of the floor next above it' or if there be no floor above it, then the space between such floor and the ceiling next above it.

Story, Half-a space under a sloping roof at the top of the building, the floor of which is not more than 2 feet below the plate, shall be counted as a half-story when not more than 60 percent of said floor area is used for rooms, baths, or toilets. A half-story containing an independent apartment or living quarters shall be counted as a full story.

Street-a public thoroughfare which affords the principal means of access to property abutting thereon.

Street Line-a dividing line between a lot, trace, or parcel of land and a contiguous street.

Structure-anything, other than a fence or retaining wall 6 feet or less in height, constructed or erected which requires location on the ground or attached to something having a location on the ground, including but not limited to signs, mobile homes, and pre-fabricated homes. Pre-fabricated homes include factory preassembly of standardized building parts, or the shipment of component building sections for permanent installation on a site. Prefabricated homes do not include mobile homes in which mobility, or the ready means of reactivating mobility, remains an integral feature of the trailer.

Structural Alterations-any change in the supporting members of a building, including but not limited to bearing walls or partitions, columns, beams, girders, or any substantial change in the roof or in the exterior walls.

Subdivision-the division of a tract of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future).

Subdivision, Major-any subdivision other than a minor subdivision.

Subdivision, Minor-a subdivision that does not involve any of the following: (a) the creation of more than a total of four lots; (b) the creation of any new public streets, (c) the extension of a public water or sewer systems, or (d) the installation of drainage improvements through one or more lots to serve one or more other lots.

Tavern-an establishment used primarily for the serving of liquor by the drink to the general public, and where food or packaged liquors may be served or sold only as an accessory to the primary use. Also called a bar or lounge.

Television or satellite dish-a device or equipment used for the receiving of television or radio programming which is a subordinate use or structure customarily incidental to and located upon the same lot as the main structure, in either a side or rear yard.

Temporary Structure Incidental to Construction-a structure (a) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or (b) located on the same lot as a residence that is under construction and occupied by the persons intending to live in such permanent residence when the work is completed, or (c) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site. These residences shall be removed from the site within one month of resolution of the situation which prompted their need.

Tidal Wetlands-all State and private wetlands, marshes, submerged aquatic vegetation, lands, and open water affected by the daily and periodic rise and fall of the tide within the Chesapeake Bay and its tributaries, the coastal bays adjacent to Maryland's coastal barrier islands, and the Atlantic Ocean to a distance of 3 miles offshore of the low water mark.

Topography-the existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

Tourist Home-a private, owner-occupied home in which bedrooms are rented to tourists or travelers.

Tower-any structure whose principal function is to support an antenna.

Townhouse-a single-family dwelling forming one of a series of three or more attached single-family dwellings separated from one another by party walls without doors, windows, or other provisions for human passage or visibility through such walls from basement to roof, and having roofs which may extend from one such dwelling unit to another.

Tract-a lot (see definition). The term tract is used interchangeably with the term lot, particularly in the context of subdivisions, where one "tract" is subdivided into several "lots".

Tree-a large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

Use-the purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained.

Use, permitted-a use which may be lawfully established in a particular district or districts provided it conforms to all regulations, requirements, and standards of such district.

Use, Principal-a use listed in the Table of Permissible Uses.

Utility Facilities-Community or Regional-all utility facilities other than neighborhood facilities.

Utility Facilities, Neighborhood-utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

Utility Transmission Facilities-fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

Variance-a modification only of bulk or area requirements in the Chesapeake City Zoning Ordinance where such modifications will not be contrary to the public interest and where owing to conditions peculiar to the property, and not the results of any action taken by the applicant, a literal enforcement of the ordinance would result in unnecessary hardship.

Warehouse-a structure used for the storage and/or the sale of products at wholesale, and where the sale of a product at retail is incidental.

Yard-an open space other than a court, on a lot unoccupied and unobstructed from the ground upward except as otherwise provided for in this Ordinance.

Yard, Front-a yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street line and the main building or any projection thereof, other than the terraces, or uncovered porches.

Yard, Rear-a yard extending across the rear of the lot between the side lot lines and measured between the rear lot line and the rear of the main building or any projection other than steps, un-enclosed porches or entrance-ways.

Yard, Side-a yard between the main building and the side line of the lot and extending from the front yard to the rear yard and being the minimum horizontal distance between the side lot line and side of the main buildings or any projections thereof.

Zoning District-an area within which certain uses of land and structures are permitted and certain others are prohibited; yards and other open spaces are required; minimum lot areas and dimensions and other requirements are established.

Zoning Administrator-the zoning administrative officer or an authorized representative designated by the Town Council to carry out duties as specified in this Ordinance. In the absence of an appointed Zoning Administrator, these duties are assumed to be the responsibility of the Town Manager.

Zoning Permit-a written statement issued by the Zoning Administrator authorizing buildings, structures, or uses consistent with the terms of this Ordinance, and for the purpose of carrying out and enforcing its provisions.